

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANDRE MARCEL HORNE,

Petitioner,

v.

WARDEN, JAMES F. SHERMAN,

Respondent.

Civil Action No. 06-24 Erie

MEMORANDUM ORDER

This habeas corpus action was received by the Clerk of Court on February 7, 2006, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 16], filed on August 10, 2006, recommended that Petitioner's Petition be dismissed for lack of subject matter jurisdiction and that a certificate of appealability be denied. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail and on Respondent. Objections were filed by Petitioner on September 13, 2006 [Doc. No. 19]. After novo review of the petition and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 26th day of September, 2006;

IT IS HEREBY ORDERED that the Petitioner's Petition for Writ of Habeas Corpus is DISMISSED for lack of subject matter jurisdiction and a certificate of appealability is DENIED.

The Report and Recommendation [Doc. No. 16] of Magistrate Judge Baxter, filed on August 10, 2006, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record

Susan Paradise Baxter, U.S. Magistrate Judge